

**Town of Milford
Zoning Board of Adjustment
Request for Rehearing
Case # 2013-14
Map 6, Lot 40
Paul Cunningham
October 3, 2013**

Present: Fletcher Seagroves, Chairman
Laura Horning, Vice Chair
Kevin Taylor
Zach Tripp
Michael Thornton, Alternate
Katherine Bauer – Board of Selectmen's representative

Absent: Bob Pichette
Len Harten, Alternate
Paul Butler, Alternate

Secretary: Peg Ouellette

Minutes approved on November 21, 2013

Chairman F. Seagroves stated that the purpose of this meeting was to discuss the request to rehear Case #2014 and there would be no public comments.

L. Horning said in her opinion this has been solid throughout the process. This is a land use question. Her only question is whether there is new evidence present that this land has not been in continuous use. Has it been a business that managed to stay a business and has it ever had any significant changes in business construction on the property, going from one business to another business so dramatically different that they would have to address it. There is no new evidence for her.

M. Thornton added or did it stop conducting business altogether for a period of one year or longer.

L. Horning said that wasn't the testimony she received. She is going by the testimony of all parties. She cannot speak to the level of activity and reiterated that it is a land use question which was answered at the first hearing.

Z. Tripp read from the three criteria for review to vote on a rehearing: does the applicant have standing? Is there any new evidence, meaning a change in conditions since the previous rehearing; or information unobtainable because of absence of key people, or other valid reasons. The applicant supplied bankruptcy documentation of J.C. Devine Inc. This evidence was available during the previous rehearing and original hearing; it was a matter of public record and was dated back in 2010. Regarding the claim of a phone conversation with the bankruptcy attorney, it was not dated and is an unsupported claim. He believed the conversation occurred after the hearing, because if it occurred before, it would have been included in the original hearing or rehearing. Exhibit A – Original application for bankruptcy was available. Exhibit B was available. Exhibit C was available in 2013 as public information. Exhibits D, E & F were all dated 6/22/10 and all were available. Exhibit G – bankruptcy closure dated 7/25/2013. He didn't check the date but believed the actual hearing was after that. Exhibit H & I – not dated but part of the bankruptcy documentation, therefore he presumes it was available. Exhibit J and K were not dated. Based on the above, he didn't believe there was any new information not available at time of the original hearing or rehearing. Third, error by the Board; as stated in the original hearing and rehearing, this is a complicated case with nuances. Evidence supplied by applicant in this request for rehearing answered some questions he had at the rehearing, but the information supplied was not new and was available at the time of the hearing. He didn't believe the Board made any error. If the majority of the Board wanted to rehear the case with the bankruptcy documentation evidence in lieu of applicant appealing to the Court, he could support that. If the majority of the Board wanted to vote there were no errors made, he could also support that.

K. Taylor said he found no new evidence to show error. The applicant had not presented any substantial new evidence that would change the complexion of the situation. He has no claim.

F. Seagroves also said he didn't see new evidence that wasn't available the first time they came before the Board. He felt the Board did not make any errors. He didn't believe the Board should do a rehearing as we have denied it twice and reheard it once. The Handbook states that if the Board decides not to grant a rehearing, their work is done. They must inform the parties that the rehearing was denied and petitioner has 30 days to appeal to the Superior Court per RSA 677.4. He believed that is where they currently stand. They would go ahead and vote unless anyone had anything else to add.

1. Was the motion filed within 30 days after the Zoning Board of Adjustment decision?

L. Horning – yes, Z. Tripp – yes, K. Taylor – yes, M. Thornton – yes, F. Seagroves – yes

2. Does the petitioner have standing to file a motion for rehearing, a selectman, a member of the ZBA, a party to this action or the person directly affected by the action?

Z. Tripp – yes, M. Thornton – yes, K. Taylor – yes, L. Horning – yes, F. Seagroves – yes

3. Has the petitioner shown that the ZBA has made a technical error or has the petitioner provided new evidence not available to the petitioner at the time of the hearing on the underlying action, or would an injustice be created if the motion for rehearing was denied?

K. Taylor – no, M. Thornton – no, Z. Tripp – no; there was no new evidence and no error by the Zoning Board, L. Horning – no, F. Seagroves – no

K. Taylor moved to deny applicant's request for rehearing on Case #2013-14.

Z. Tripp seconded.

FINAL VOTE:

L. Horning – yes, Z. Tripp –yes, K. Taylor – yes, M. Thornton – yes, F. Seagroves – yes